

CITIZENSHIP AND IMMIGRATION

EXCLUSION AND REMOVAL

Judicial reviews of negative pre-removal risk assessment (PRRA) of senior immigration officer (PRRA officer) pursuant to *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act), s. 112(1), and of Canada Border Services Agency (CBSA) inland enforcement officer's (enforcement officer) refusal to grant applicant's request made pursuant to *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations), s. 238(2) to voluntarily remove herself to Antigua and Barbuda — Applicant, citizen of Antigua, also holding Chinese passport, claiming refugee protection for fear of removal to China because of fraud allegations against her in China made on basis of Chinese prosecutor's recommendation to prosecute applicant — CBSA seeking applicant's removal from Canada on basis of removal order issued against her — Applicant purchasing plane ticket to return to Antigua — CBSA denying applicant's request to return her passport, to allow her to travel, pursuant to Regulations, s. 238(2)(b),(c) — Deciding to return applicant to China — PRRA officer concluding, *inter alia*, insufficient evidence to establish that applicant could be victim of predetermined verdict issued by corrupt judiciary in China; [9] that Applicant not facing more than mere possibility of persecution; that more likely than not that she would not face danger of torture, risk to life, or risk of cruel, unusual treatment or punishment if returned to China — Main issues whether decisions of PRRA, enforcement officers reasonable — PRRA decision not reasonable — Unclear from evidence in record whether applicant individually charged for fraud or simply under investigation — PRRA officer not identifying this alleged inconsistency — Difficult to see how PRRA officer satisfied that China's courts usually concerned with applying independent judicial authority in accordance with established legal procedures — PRRA officer failing to consider applicant's specific circumstances as shareholder, director of companies implicated in alleged fraud — Unreasonable for PRRA officer to conclude that detention of other accused implicated in same case not continuing indefinitely; accordingly, that applicant would not face similar indefinite period of detention while investigation proceeding — No foundation for PRRA officer's finding that strength of prosecutor's case against applicant negating risk of torture — As to voluntary removal decision, determined to be procedurally unfair, not reasonable, lacking justification, transparency, intelligibility — Regulations not prescribing specific procedural fairness requirements for decisions relating to voluntary requests for removal — Content of duty of fairness informed by factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 — Some of those factors suggesting high level of procedural fairness while others suggesting protections at lower end of scale — Viewed in whole, applicant was to be afforded at least right to know case against her, to have opportunity to respond to it — Applicant not afforded these protections — Other than Chinese authorities' recommendation for prosecution, applicant not knowing case having to meet as CBSA disclosing no information in that regard — Applicant therefore deprived of opportunity to address case — CBSA expected to at least provide applicant with summary or outline of evidence that available to, reviewed by enforcement officer — Enforcement officer not responding to applicant's request for document disclosure — Enforcement officer's refusal based on Regulations, s. 238(2)(c), i.e. that applicant seeking to evade or frustrate cause of justice in China — To reach conclusion that s. 238(2)(c) applying in present matter requiring evidentiary basis — Question involving procedural fairness certified — Applications allowed.

YANG V. CANADA (IMMIGRATION, REFUGEES AND CITIZENSHIP) (IMM-4026-17, IMM-4079-17, 2018 FC 496, Strickland J., judgment dated May 9, 2018, 38 pp.)